IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

Crl.MC.No. 505 of 2007()

(IN C.C.NO.896/06 on the FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,NORTH PARAVUR)

PETITIONER: DEFACTO COMPLAINANT:

T.N.GIRI, S/O NARAYANAN,
THATTIL HOUSE,NATTIKA P.O.,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS:

1. **STATE OF KERALA/S.I.OF POLICE,**
   NORTH PARAVUR, REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

***ADDL.R2 & R3 ARE IMPLEADED:**

R2. BIJU.K.V., S/O.VARGHESE,
MANAGER, MALABAR FINANCE ENTERPRISES,
KANJIERASSERY HOUSE, KOTTAMURI P.O., THRISSUR.

R3. JOHNSON, MANAGING PARTNER,
MALABAR FINANCE ENTERPRISES, KORATE, THRISSUR.

(ADDL.R2 & R3 ARE IMPLEADED AS PER ORDER DTD. 9/04/07 IN CRL.M.A.NO.1867/07)

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/06/2007 ALONG WITH CRL.MC.NO.675 OF 2007 AND CRL.M.C.NO.702 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.505, 675 and 702 of 2007

Dated this the 13th day of June 2007

O R D E R

The petitioner in Crl.M.C.No.505 of 2007 is the de facto complainant in a prosecution for offences punishable, inter alia, under Sections 465 and 471 read with 34 I.P.C. Altogether, there are three accused persons. Accused 1 and 3 are facing the trial. They are respondents 2 and 3 in Crl.M.C.505 of 2007. Accused 2 is absconding. The defacto complainant's wife claims to be the registered owner of a vehicle. That vehicle was seized and she filed a petition for release of the vehicle. Both the first accused and the wife of the defacto complainant claimed possession of the vehicle. The defacto complainant's wife claimed to be the registered owner, whereas the first accused claimed to be the owner as per an agreement. The defacto complainant's wife has a case that the said agreement is a forged agreement.

2. To cut a long story short, the learned Magistrate had considered the claim for release of the vehicle under Section 451 Cr.P.C of both the first accused and the wife of the defacto

complainant. By the common order dated 14/2/2007, the vehicle was directed to be released to the custody of the first accused who has been keeping possession of the vehicle all along. The defacto complainant's wife has preferred Crl.M.Cs to challenge the said common order. Those Criminal Miscellaneous Cases are pending as Crl.M.C.Nos.675 and 702 of 2007. While the counsel for the first accused asserts that the impugned order may not be disturbed, the defacto complainant's wife (I shall refer to her as the registered owner) claims that the said vehicle may be released to her and the order directing release in favour of the first accused may be set aside.

3. I note that the trial of the case is at the fag end. The vehicle has been in the possession of the first accused all along. In these circumstances, I am satisfied that it is not necessary to disturb the order passed by the learned Magistrate and it will only be appropriate to direct the first accused to keep possession of the vehicle on the terms fixed by the court below. Appropriate directions for early disposal of the case can be issued. Along with the final disposal of the case, the learned Magistrate must also pass appropriate orders under Section 452 Cr.P.C regarding release of the vehicle.

4. Coming to Crl.M.C.No.505/07 that is filed by the de facto complainant/the husband of the registered owner, his grievance is very limited. He now only complains that C.Ws. 8 to 11 have not been examined. The learned Magistrate had given many opportunities to the prosecution to produce the said witnesses; but they have not been produced. The de facto complainant complains that it is not enough if the court directs the production of the witnesses by the prosecution, the court must have issued summons to the witnesses to appear and give evidence. The learned counsel for the de facto complainant finally submits that his grievances stand redressed if the court were pleased to direct issue of process to C.Ws. 8 to 11 to secure their presence and record their evidence.

5. The de facto complainant has one more grievance. According to him, a copy of an agreement dated 04/04/1997, (copy of which is produced as Annexure-F) is available before the lower court. That agreement was seized in the course of investigation and the same has been produced before court, it is submitted. In the memorandum of evidence, CW1 is cited to prove the copy of that agreement dated 4/4/1997. According to the petitioner/the de facto complainant, that document must also be permitted to be introduced in evidence subject to the law of

relevance and admissibility. The learned counsel for the accused submits that the accused would also like to see the end of the prosecution at the earliest and the accused have no objection in this Court directing examination of witnesses C.Ws. 8 to 11 and also giving an opportunity to the prosecution to mark the agreement dated 4/4/1997 subject to the law regarding relevance and admissibility. I am, in these circumstances, satisfied that all these three Criminal Miscellaneous Cases can be disposed of as agreed.

6. In the result, Crl.M.C.Nos.702 and 675 of 2007 are dismissed with the direction that the trial in C.C.No.896/2002 must be completed, as expeditiously as possible and appropriate final direction under Section 452 Cr.P.C must be issued by the learned Magistrate regarding disposal of the vehicle.

7. Crl.M.C.No.505/2007 is allowed in part. The learned Magistrate is directed to issue process to C.Ws. 8 to 11 and give the prosecution an opportunity to examine them. The learned Magistrate shall also give the prosecution an opportunity to introduce the agreement dated 4/4/1997 to which reference is made in the memorandum of evidence (while showing the purpose for which CW1 summoned for examination).

8. The learned Magistrate shall ensure that C.Ws. 8 to 11 are examined and an opportunity for introduction of the agreement dated 4/4/1997 (subject to the law relating to admissibility and relevance) is given to the prosecution immediately and the case is disposed of within a period of forty five days from the date of receipt of a copy of this order.

9. Handover copy of this order to both counsel for production before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

Heard. Admitted. Call for a report from the learned Magistrate as to whether all the witnesses, in respect of whom prayer for recall is allowed as per Annexure-P order dated 03/02/2007, have been recalled and examined. The learned Magistrate shall explain if any one of them have not been further examined and as to why they were not further examined. It shall also be explained whether any application to receive Annexure-O document is pending before the court and whether any orders have been passed on such application. Such report must reach this court by 12/03/2007.

2. Call on 13/03/2007. There shall be an interim stay against final disposal of C.C.No.896/06 till that date.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006